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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 DAVID LEONI, and all similarly situated<sup>1</sup>  
8 individuals,

9 Plaintiffs,

10 v.

11 EXPERIAN INFORMATION SOLUTIONS  
12 INC.,

13 Defendant.

Case No. 2:17-cv-01408-RFB-VCF

ORDER

14 **I. INTRODUCTION**

15 Plaintiff David Leoni (“Leoni” or “Plaintiff”) sues Defendant Experian Information  
16 Solutions, Inc. (“Experian” or “Defendant”) for alleged violations of the Fair Credit Reporting Act  
17 (“FCRA”), 15 U.S.C. 1681 *et seq.* Before the Court are several motions/appeals: Plaintiff’s Appeal  
18 of the Magistrate Judge’s October 9, 2018 Order, ECF No. 89, Plaintiff’s Motion for Summary  
19 Judgment, ECF No. 90, Defendant’s Motion for Summary Judgment, ECF No. 98, Plaintiff’s  
20 Motion for Class Certification, ECF No. 94, Plaintiff’s Motions to Seal, ECF Nos. 92, 96, 117,  
21 Plaintiff’s Motion to Strike, ECF No. 119, Plaintiff’s Motion for Leave to File Supplemental  
22 Evidence, ECF No. 125, and Defendant’s Motions to Seal, ECF Nos. 100, 103, and 114. For the  
23 reasons stated below the Court grants in part and denies in part Plaintiff’s and Defendant’s  
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28 <sup>1</sup> This complaint was amended on September 28, 2017, and the named parties changed accordingly. The Court orders use of this caption from this point forward.

1 respective motions for summary judgment, denies Plaintiff's Motion for class certification, and  
2 grants all motions to seal. The remaining motions and appeals are dismissed as moot.  
3

## 4 **PROCEDURAL BACKGROUND**

5 David Leoni sued Defendant Experian Information Solutions on May 18, 2017. ECF No.  
6 1. Plaintiff filed his operative First Amended Complaint on September 28, 2017. The original  
7 complaint also named Military Star as a Defendant, however Plaintiff's amended complaint  
8 terminated Military Star's presence in this action. ECF No. 17. In the amended complaint, Plaintiff  
9 asserts one cause of action for violations of the Fair Credit Reporting Act (FCRA) on behalf of  
10 Leoni and a proposed class and a second cause of action as to the named plaintiff only for  
11 Defendant Experian's alleged FCRA violations.  
12

13 Now both parties move for summary judgment. ECF Nos. 90, 98. Both parties have  
14 opposed and filed corresponding replies. ECF Nos. 109, 110, 112, 115. Plaintiff has also filed an  
15 appeal of the Honorable Cam Ferenbach's prior order on October 10, 2018 denying Plaintiff's  
16 Motion to Compel. ECF No. 89. Defendant has opposed that appeal. ECF No. 101. In addition,  
17 Plaintiff has also filed three motions to seal or redact portions of the record, a motion to strike or  
18 leave to seek surreply to Defendant's motion for summary judgment, a motion for leave to submit  
19 supplemental evidence regarding the appeal of the Court's October 10, 2018 order, and a motion  
20 for class certification pursuant to Fed. R. Civ. P. 23 that are also now before the Court. ECF Nos.  
21 92, 94, 96, 117, 119. Defendant has responded to both the motion for class certification and two  
22 of the motions to seal. ECF Nos. 104, 105, 106. Finally, Defendant has also filed three motions to  
23 seal. ECF No. 100 103, 114.  
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## 26 **II. FACTUAL BACKGROUND**

### 27 **a. Undisputed Facts**

28 The Court finds the following facts to be undisputed.

1 On or about March 22, 2011, Plaintiff filed for Chapter 13 Bankruptcy in Nevada. Leoni's  
2 debt obligation to nonparty Military Star was scheduled in the bankruptcy. On May 13, 2016,  
3 Leoni's Chapter 13 Plan was confirmed, and Leoni's debt to Military Star was discharged on  
4 August 1, 2016. On August 31, 2016, Leoni requested and received a copy of his Experian  
5 consumer disclosure pursuant to 15 U.S.C. §1681g(a). The initial Experian consumer disclosure  
6 listed in its trade line for Military Star that the recent balance was "\$5,932 as of 5/27/2013" and  
7 listed the account's status as: "Petition for Chapter 13 Bankruptcy/Never late. \$5932 written off."  
8 ECF No. 90, Ex. 4. Below the account history was a note that the consumer: "filed Chapter 13  
9 bankruptcy on Mar 31, 2011." ECF No. 90, Ex. 4. Leoni sent a dispute letter dated October 20,  
10 2016 to the consumer reporting agency Experian. The letter stated in part: "My credit report shows  
11 you are inaccurately reporting balances owed for the month of May 2013 on this account . . . [t]his  
12 information is incorrect because I owed a \$0 balance at the time this was reported . . . I performed  
13 all obligations required to Military Star." ECF No. 90, Ex. 4. On November 7, 2016, Experian  
14 contacted Military Star and sent it an ACDV (automated consumer dispute verification) form  
15 regarding Plaintiff's dispute. Military Star responded and sent its ACDV response to Experian on  
16 or about November 8, 2016. On November 24, 2016, Experian mailed Leoni the results of  
17 reinvestigation. The Military Star tradeline correctly listed the balance owed as \$0, and correctly  
18 noted that the status of the account was "[d]ischarged through Bankruptcy Chapter 13." However,  
19 the account history stated that the debt had been "included in Chapter 13 Bankruptcy on Nov 08,  
20 2016," which was not the date on which Plaintiff had actually filed his bankruptcy petition.

#### 21 22 **b. Disputed Facts**

23 The parties dispute the legal effect of the circumstances described.

### 24 **III. LEGAL STANDARD**

#### 25 **a. Summary Judgment**

26 Summary judgment is appropriate when the pleadings, depositions, answers to  
27 interrogatories, and admissions on file, together with the affidavits, if any, show "that there is no  
28 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

1 law.’ Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When  
2 considering the propriety of summary judgment, the court views all facts and draws all inferences  
3 in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789,  
4 793 (9th Cir. 2014).

5 If the movant has carried its burden, the non-moving party “must do more than simply  
6 show that there is some metaphysical doubt as to the material facts . . . . Where the record taken  
7 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine  
8 issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (quotation marks  
9 omitted). It is improper for the Court to resolve genuine factual disputes or make credibility  
10 determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th  
11 Cir. 2017) (citations omitted).

12  
13 b. Class Certification Legal Standard

14 In order to qualify for class certification, the proposed class must meet all the  
15 requirements of Federal Rule of Procedure 23(a) and at least one of the requirements of Rule  
16 23(b). Fed. R. Civ. P. 23(a), (b). The proponents of the class bear the burden of demonstrating  
17 that all the prerequisites for class designation are met. See Meyer v. Portfolio Recovery Assocs.,  
18 LLC, 707 F.3d 1036, 1041 (9th Cir. 2012), cert. denied, 707 F.3d 1036, (2013). Although a court  
19 should not engage in a trial on the merits at the class certification stage,  
20 “[t]he class determination generally involves considerations that are enmeshed in the factual and  
21 legal issues comprising the plaintiff’s cause of action.” Wal-Mart Stores, Inc. v. Dukes, 564 U.S.  
22 338, 351, (2011) (internal quotation marks and citation omitted). The four threshold  
23 requirements under Rule 23(a) are that:

- 24 (1) the class is so numerous that joinder of all members is impracticable;  
25 (2) there are questions of law or fact common to the class;  
26 (3) the claims or defenses of the representative parties are typical of the claims or  
27 defenses of the class; and  
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1 (4) the representative parties will fairly and adequately protect the interests of the class.  
2 Fed. R. Civ. P. 23(a).

3 The Supreme Court refers to these elements as “numerosity,” “commonality,”  
4 “typicality,” and “adequacy of representation,” respectively. Amchem Products, Inc. v. Windsor,  
5 521 U.S. 591 (1997). In this case, Plaintiff moves for class certification as a  
6 damages class under Rule 23(b)(3). Certification is appropriate under Rule 23(b)(3) if the court  
7 finds that “questions of law or fact common to the class members predominate over any  
8 questions affecting only individual members, and that a class action is superior to other available  
9 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

#### 10 **IV. DISCUSSION**

##### 11 a. *The Fair Credit Reporting Act*

12 “Congress enacted the Fair Credit Reporting Act [FCRA] in 1970 ‘to ensure fair and  
13 accurate credit reporting, promote efficiency in the banking system, and protect consumer  
14 privacy.’” Gorman v. Wolpoff & Abramson, LLP, 584 F.3d 1147, 1153 (9th Cir.  
15 2009) (quoting Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, (2007)). “As an important means to  
16 this end, the Act sought to make ‘consumer reporting agencies exercise their grave responsibilities  
17 [in assembling and evaluating consumers’ credit, and disseminating information about  
18 consumers’ credit] with fairness, impartiality, and a respect for the consumer’s right to  
19 privacy.’” Id. (alteration in original) (quoting 15 U.S.C. § 1681(a)(4)).

20 The three major nationwide consumer reporting agencies (Experian, TransUnion, and  
21 Equifax) review trade line disputes through an electronic information network called e-OSCAR  
22 (the Online Solution for Complete and Accurate Reporting). Consumer Fin. Prot. Bureau, Key  
23 Dimensions and Processes in the U.S. Credit Reporting System: A Review of how the Nation’s  
24 Largest Credit Bureaus Manage Consumer Data, 32 (2012). After a consumer notifies a consumer  
25 reporting agency of a dispute, the consumer reporting agency internally reviews the dispute, and  
26 if it cannot be resolved internally, forwards the information to the furnisher (the original source of  
27 the information) using an electronic form called an automated consumer dispute verification form

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1 (ACDV). Id. The furnisher then investigates the response and sends it back to the consumer  
2 reporting agency. Id.

3  
4 *b. Leoni and Experian's Motions for Summary Judgment*

5 The Court addresses the parties' cross-motions for summary judgment first.

6  
7 i. Experian's Liability as to Leoni's Initial Disclosure Claim (15 U.S.C. §  
8 1681g)

9 Leoni first alleges that Experian violated section 1681g of the FCRA. Section 1681g  
10 requires in part that "every consumer reporting agency shall, upon request . . . clearly and  
11 accurately disclose to the consumer . . . all information in the consumer's file at the time of the  
12 request . . . ." 15 U.S.C. § 1681g(a)(1). A "consumer's file includes 'all information on the  
13 consumer that is recorded and retained by a [consumer reporting agency] that might be furnished,  
14 or has been furnished, in a consumer report on that customer.'" Shaw v. Experian Info Sols. Inc.,  
15 891 F.3d 749, 759 (9th Cir. 2018) (internal citations omitted). For the following reasons, the Court  
16 finds that Experian violated section 1681g.

17 As a preliminary matter, Experian argues that the "included in Chapter 13 Bankruptcy on  
18 Nov 08, 2016" line is not included in consumer reports disclosed to third parties and thus is not a  
19 relevant consideration under section 1681g. Def.'s Mot. Summ. J., 10, ECF No. 98. The Court  
20 disagrees with this analysis.

21 Experian's reinvestigation results as mailed to Leoni constituted a consumer disclosure for  
22 the purposes of section 1681g(a)(1). But the results *also* triggered the reinvestigation procedures  
23 outlined in section 1681i of the FCRA, which requires the consumer reporting agency to disclose  
24 in its notice of the results of reinvestigation "a *consumer report that is based upon the consumer's*  
25 *file* as that file is revised as a result of the reinvestigation." 15 U.S.C. § 1681i(a)(6)B(ii) (emphasis  
26 added). The parties dispute whether the reinvestigation results sent to Leoni were a consumer  
27 disclosure as described in section 1681g *and* a consumer report as required to be sent in response  
28 to consumer disputes pursuant to section 1681i(a)(6)B(ii).

1           Ultimately the Court agrees with Plaintiff that the reinvestigation results Experian sent  
2       Leoni were both a consumer disclosure as described in section 1681g and *also* a consumer report  
3       sent pursuant to 1681i(a)(6)B(ii). The reinvestigation results clearly state that the information  
4       contained therein *could* and *would* be sent to any entity that has reviewed the consumer's credit  
5       report within the last two years for employment purposes upon the consumer's request. ECF  
6       No.90-7 ("If there has been a change to your credit history resulting from our reinvestigation . . .  
7       you may request that Experian send an updated report to those who received your report within  
8       the last two years for employment purposes, or within the last six months for any other purpose."").  
9       This thus meets the definition of information that could be included in a consumer report, because  
10      it includes information that "might be furnished, or has been furnished in a consumer report on  
11      that consumer." Shaw, 891 F.3d, at 759. If Experian wants to assert that such information would  
12      never be included in reports submitted to third parties, then it should not include that information  
13      in reinvestigation results sent to consumers pursuant to section 1681i(a)(6)B(ii).

14           When considering whether a party has violated 1681g, the operative consideration is  
15      whether "the disclosure is understandable to the average consumer," and whether the information  
16      provided to the consumer was in a form that was both "clear and accurate." Shaw, 891 F.3d at 759.  
17      Here the information was presented clearly but was not entirely accurate. While the Military Star  
18      tradeline correctly showed a zero balance as is required after debts are discharged in bankruptcy,  
19      it listed the wrong date on which the petition date was filed, stating that the debt had been "included  
20      in Chapter 13 bankruptcy on Nov 08, 2016." This could be confusing or misleading because it  
21      could imply that the consumer filed for bankruptcy on a different date than he actually did, or  
22      given that the tradelines for other items list the correct date on which the petition was filed, could  
23      imply that the consumer filed for bankruptcy twice. Consumers request disclosures pursuant to  
24      section 1681g in order to compare the information in the credit file with their own personal  
25      information. Shaw, 891 F.3d at 760 (citing Gillespie v. Equifax Info. Servs., LLC 484 F.3d 938,  
26      941 (7th Cir. 2007)) ("The disclosure must be made in a manner sufficient to allow the consumer  
27      to compare the disclosed information from the credit file against the consumer's personal  
28      information in order to allow the consumer to determine the accuracy of the information set forth

1 in her credit file.”). For this reason, Experian’s argument that listing the incorrect date is not  
2 confusing or misleading to the consumer because the consumer knows how many times he has  
3 filed for bankruptcy misstates the relevant consideration. Def.’s Mot. Summ. J. 8-9, ECF No. 98.  
4 The relevant consideration is not whether the consumer was subjectively misled or confused by  
5 the information contained in the file, but whether the information contained in the file is objectively  
6 inaccurate. The Court finds that the tradeline was inaccurate and grants summary judgment to  
7 Leoni as to Experian’s liability on the 1681g claim.

8  
9 ii. Experian’s Liability as to Leoni’s Reasonable Procedures Claim (15  
10 U.S.C. § 1681e(b))

11 Next the Court turns to Plaintiff Leoni’s 1681e(b) claim. Section 1681e(b) of the FCRA  
12 requires the consumer reporting agency to “follow reasonable procedures to assure the maximum  
13 possible accuracy of the information concerning the individual about whom the report relates.” 15  
14 USC § 1681e(b). Liability under 1681e(b) “is predicated on the reasonableness of the credit  
15 reporting agency’s procedures in obtaining credit information.” Guimond v. Trans Union Credit  
16 Info. Co., 45 F.3d 1329, 1333 (9th Cir. 1995). To bring a 1681e claim, the “consumer must present  
17 evidence tending to show that a [CRA] prepared a report containing inaccurate  
18 information.” Guimond, 45 F.3d at 1333. The consumer must also “first make a prima facie  
19 showing of inaccurate reporting by the CRA.” Shaw, 891 F.3d at 756 (internal citations omitted).  
20 Inaccurate for the purposes of FCRA means information that is either “patently incorrect” or is  
21 “misleading in such a way and to such an extent that it can be expected to adversely affect credit  
22 decisions.” Id. Once the consumer has made a prima facie showing of inaccuracy, he or she must  
23 next show that the consumer reporting agency failed to follow reasonable procedures to assure the  
24 maximum possible accuracy of the information. 15 U.S.C. § 1681e(b).

25 Experian falsely implies that a consumer must show that the information would be  
26 transmitted to a third party in order to make out a section 1681e(b) claim. Def.’s Mot. Summ. J.  
27 11, ECF No. 98. But the Ninth Circuit has explicitly held that proof of transmission to a third party  
28 is not a prerequisite for making a 1681e(b) claim. Guimond, 45 F.3d at 1333 (“Accordingly the



1 district court erred in finding that any liability under 1681e(b) was predicated, as a matter of law,  
2 on the occurrence of some event—denial of credit or transmission of the report to third parties—  
3 resulting from the compilation and retention of erroneous information.”).

4 The Court finds Leoni has made a prima facie showing of inaccuracy. The “included in  
5 Chapter 13 bankruptcy on Nov 08, 2016” line is patently incorrect in that it clearly misstates the  
6 date on which the bankruptcy petition was filed. However, as explained above, the inquiry does  
7 not end there. The consumer must also show that the consumer reporting agency’s procedures were  
8 not reasonable.

9 The Ninth Circuit has not yet fully articulated a test for reasonableness of procedures in  
10 this context. Other circuit courts findings on this matter are thus informative. The Seventh Circuit,  
11 in the case Henson v. CSC Credit Servs.,, has noted that whether a credit reporting agency has a  
12 duty to go beyond the original source (also called the furnisher) of the information, will depend on  
13 whether the consumer has alerted the reporting agency of the furnisher’s possible unreliability and  
14 whether the costs of verifying the accuracy of the furnisher outweigh the possible harm that  
15 inaccurately reported information may cause the consumer. Henson v. CSC Credit Servs., 29 F.3d  
16 280, 287 (7th Cir. 1994)

17 It is at this juncture that Plaintiff’s argument fails. The Court agrees with Experian that  
18 Leoni has failed to show that Experian’s procedures were not reasonable. Use by consumer  
19 reporting agencies of automated ACDV processes, such as the one Experian employed in this case,  
20 does not, as a matter of law, inoculate consumer reporting agencies from section 1681e(b)  
21 reasonableness claims. But Leoni has failed to provide any evidence showing that the furnisher,  
22 Military Star, was unreliable in any way. In this case, the only notice that Experian had as to  
23 Military Star’s potential unreliability as a furnisher was the dispute letter Leoni sent to Experian.  
24 Leoni described his dispute as follows: “My credit report shows you are inaccurately reporting  
25 balances owed for the month of May 2013 on this account . . . [t]his information is incorrect  
26 because I owed a \$0 balance at the time this was reported . . . I performed all obligations required  
27 to Military Star.” ECF No. 90, Ex. 4. The dispute letter does not mention Leoni’s previous  
28 bankruptcy petition or subsequent discharge. Thus, Experian did not have any reason to believe

1 that the dates listed on Military Star's ACDV were incorrect. Both sides do not dispute that Leoni  
2 did not follow up directly with Experian after receiving the reinvestigation results, but instead filed  
3 this instant lawsuit. The Court therefore finds that Experian's credit reporting procedures as  
4 outlined in this case were reasonable, and grants Experian summary judgment on this claim.

5  
6 iii. Experian's Liability as to Leoni's Reasonable Reinvestigation Claim  
7 (15 U.S.C. § 1681i)

8 Lastly the Court examines Leoni's claim that Experian violated section 1681i of the FCRA.  
9 Section 1681i(a)(1)(A) outlines the scope of the reinvestigation required by consumer reporting  
10 agencies. It states in part:

11 [I]f the completeness or accuracy of any item of information contained in a  
12 consumer's file at a [CRA] is disputed by the consumer and the consumer notifies  
13 the agency directly . . . of such dispute, the agency shall, free of charge, conduct a  
14 reasonable reinvestigation to determine whether the disputed information is  
15 inaccurate and record the current status of the disputed information, or delete the  
item from the file . . . before the end of the 30-day period beginning on the date on  
which the agency receives the notice of the dispute from the consumer . . .

16 15 U.S.C. §1681i(a)(1)(A).

17  
18 As articulated in the previous section regarding Leoni's section1681e(b) claim, Leoni's  
19 dispute letter mentions only the incorrect "write-off balance," and does not mention Leoni's  
20 previous bankruptcy petition or subsequent discharge. It is not disputed that Experian updated the  
21 tradeline to reflect the zero balance as the consumer had requested. The Court thus finds that  
22 Experian's reinvestigation, which included contacting the original furnisher and updating the  
23 tradeline in light of Military Star's ACDV response, was a reasonable reinvestigation of the only  
24 issues raised in the dispute letter, and grants summary judgment in favor of Experian on this claim.  
25 The Court also incorporates by reference its reasoning in Caseman v. Silver State Schs. Credit  
26 Union, where the Court addressed this same issue. Caseman v. Silver State Schs. Credit Union No.  
27 2:17-cv-00140-RFB-PAL, 2018 WL 3630484 (D. Nev. 2018).

28 iv. Experian's § 1681g Violation Was Not Willful and Leoni Has Failed

to Show Actual Damages, Emotional Distress Damages, or Out-of-Pocket Expenses.

The Court finds as a matter of law that, while Experian did violate 1681g(1)(a), Experian's violation was not willful. To show willfulness and be granted statutory damages under the FCRA, a consumer must show that a defendant knowingly or recklessly violated the FCRA. Shaw, 891 F.3d, at 760. A court may find that a defendant has behaved recklessly when the defendant's "action both is 'a violation under a reasonable reading of the statute's terms' and 'shows that the company ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.'" Shaw, 891 F.3d at 760 (internal citations omitted). The Court finds that Experian's conduct regarding the reporting of the "included in Chapter 13 Bankruptcy on Nov 08, 2016" tradeline cannot meet this standard. Leoni has failed to show that Experian's policies either violated a reasonable reading of the statutory requirements of section 1681g or that its risk of violating the law was substantially greater than the risk of a reading of the law that was merely careless.

Next the Court considers whether Leoni suffered any actual damages pursuant to section 1681o of the FCRA. To prove actual damages based on a statutory FCRA violation, a party must show that a causal relationship exists between the violation and an adverse credit action. Guimond, 45 F.3d at 1332–33. The Court concludes that Leoni has not made this showing.

While Leoni can undoubtedly show that his bankruptcy has resulted in him experiencing adverse credit actions, Leoni has not shown that the "included in Chapter 13 Bankruptcy on Nov 08, 2016" bankruptcy tradeline, which listed the wrong date on which the petition was filed, was a factor in any adverse credit decisions, let alone a substantial factor. Leoni Dep. 157:18 – 172:25, ECF No. 98-1 (deposition testimony of David Leoni describing various attempts to apply for credit). Leoni has also submitted no evidence of anything other than conclusory recitals of emotional distress. In response to Experian's questions about emotional distress, Mr. Leoni admitted in deposition testimony that any distress he feels comes from the bankruptcy being listed on his credit report, rather than the incorrect date listed on the Military Star tradeline specifically. Leoni Dep. 159:22 – 160:10, ECF No. 98-1 .

1 Finally, Leoni has failed to allege any out-of-pocket expenses other than pre-litigation  
2 costs. See Leoni Dep. 149:25 – 152:22, ECF No. 98-1 (describing how Leoni took time off from  
3 work to go his attorneys’ office). Because no reasonable factfinder could find in favor of Leoni on  
4 the question of damages, the Court awards Leoni no damages.

5 c. Class Certification

6 Leoni has also filed a motion for class certification pursuant to Fed. R. Civ. P. 23(a) and  
7 23(b)(3). For the following reasons, this Court denies Plaintiff’s Motion for Class Certification in  
8 its entirety.

9 i. Discussion

11 Plaintiff specifically seeks to certify the class under Fed. R. Civ. P. 23(b)(3), which certifies  
12 classes in which the “court finds that the questions of law or fact common to class members  
13 predominate over any question affecting only individual members, and that a class action is  
14 superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed.  
15 R. Civ. P. 23(b)(3). These requirements of 23(b)(3) are also called the “predominance” and  
16 “superiority” requirements of 23(b)(3). Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1189  
17 –93 (9th Cir. 2001). “Implicit in the satisfaction of the predominance test is the notion that the  
18 adjudication of common issues will help achieve judicial economy.” Id. at 1189 (internal citations  
19 omitted). When considering whether a class action is the superior device to use to resolve a dispute,  
20 the Court should consider: 1) the interest of each member in “individually controlling the  
21 prosecution or defense of separate actions”; 2) “the extent and nature of any litigation concerning  
22 the controversy already commenced by or against members of the class; 3) “ the desirability or  
23 undesirability of concentrating the litigation of the claims in the particular forum,” and 4) “the  
24 difficulties likely to be encountered in the management of the class action.” Fed. R. Civ. P.  
25 23(b)(3)(A) – (D). “[W]hen the complexities of class action treatment outweigh the benefits of  
26 considering common issues in one trial, class action treatment is not the ‘superior’ method of  
27 adjudication.” Zinser, 253 F.3d at 1192.  
28

1           Leoni has failed to show that he can meet either the predominance or superiority  
2 requirements of Rule 23(b)(3). To successfully make out 1681g disclosure claims, each class  
3 member would have to show that the 1681g(1)(A) disclosure contained information that would  
4 *also* be contained in a consumer report, pursuant to Shaw. Shaw v. Experian Info Sols. Inc., 891  
5 F.3d 749, 760 (9th Cir. 2018). Named plaintiff Leoni met this requirement because the section  
6 1681g disclosure he received was sent in response to a dispute letter, thus rendering it a consumer  
7 report pursuant to the requirements of section 1681i(a)(6)B(ii). However, whether that same  
8 finding applies to other class members requires individualized determinations for which common  
9 questions of fact would not predominate and for which use of the class action device would not be  
10 the superior method of adjudication. For this reason, class certification is denied.

11                     d. Motions to Seal

12           In light of the voluminous amounts of sensitive information included in this case, including  
13 Leoni's social security number and financially sensitive information and Experian's confidential  
14 policy and procedure manuals, the Court grants all pending motions to seal in this matter.

15                     e. Objection to the Court's October 9, 2019, Order and Motion to Strike Dismissed  
16                         as Moot

17           Because the Court's rulings on the summary judgment motions in this case are dispositive  
18 and foreclose further discovery in this matter, Plaintiff's Appeal of the Court's October 9, 2018  
19 order is denied as moot, as is Plaintiff's Motion for leave to submit supplemental evidence, and  
20 Plaintiff's Motion to Strike Experian's Reply in Support of its Motion for Summary Judgment.  
21 ECF Nos. 89, 119, 125.

22  
23                     **V.       CONCLUSION**

24           **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Summary Judgment (ECF  
25 No. 98) is GRANTED in part and DENIED in part.

26           **IT IS FURTHER ORDERED** Defendant's Motion for Summary Judgment (ECF No.  
27 100) is GRANTED in part and DENIED in part.

28       ///

1           **IT IS FURTHER ORDERED** that Plaintiff's Motion for Class Certification (ECF No.  
2 94) is DENIED.

3           **IT IS FURTHER ORDERED** that Plaintiff and Defendant's Motions to Seal (ECF Nos.  
4 92, 96, 100, 103, 114, 117) are GRANTED.

5           **IT IS FURTHER ORDERED** that Plaintiff's Appeal of the October 8, 2019 order (ECF  
6 No. 89) is DENIED as moot.

7           **IT IS FURTHER ORDERED** that Plaintiff's Motions for Leave to Submit Supplement  
8 Evidence (ECF No. 125) and Motion to Strike (ECF No. 119) are DENIED as moot.

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10           DATED: September 26, 2019.



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11  
12           **RICHARD F. BOULWARE, II**  
13           **UNITED STATES DISTRICT JUDGE**